IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8511 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDA JAYANTILAL PAREKH - Petitioner
Versus
STATE OF GUJARAT - Respondent

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Appearance :
MR JA ADESHRA for Petitioner : 1,
MR KETAN DWIVEDI AGP for Respondent: 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 27/08/2007

ORAL JUDGMENT

1. Heard Shri Adeshra, learned counsel for the petitioner

and Shri Dwivedi, learned AGP for the respondent State.

2. Shri Adeshra, learned counsel for the petitioner has submitted that the petitioner was promoted to the post of Deputy Executive Engineer in the month of October, 1979. As the petitioner was eligible for promotion to the post of Executive Engineer and his name was recommended by the Disciplinary Proceedings Committee, he be deemed to have been promoted from 9.12.1998. It is submitted that chargesheet itself came to be issued on 14.6.1999. The petitioner has been exonerated in the Departmental Inquiry on 9.3.2001 and the petitioner came to be promoted to the post of Executive Engineer on 3.10.2001. The petitioner has attained the age of superannuation and retired on 31.3.2006. Now, therefore, the petition is confine only to the claim of deem date to be given to the petitioner and other consequential benefits flowing therefrom as the petitioner is entitled to deem date from 9.12.1998.

3. Shri Dwivedi, learned AGP has placed on record the communication addressed by Narmada Water Resources and Water Supply, Kalpsar Department, dated 18.7.2007 indicating that question of giving deemed date to the petitioner is under consideration and necessary order shall be passed after considering the case. The said communication dated 18.7.2007 is ordered to be taken on record.

4. It deserves to be noted that an affidavit-in-reply is filed by one Shri P.M. Christin, Deputy Secretary, Narmada, Water

Resources and Water Supply Department, which is affirmed on 26.6.2000. In para-4, it is unequivocally stated that it is true that the Joint Selection Committee met on 15.12.1997 in order to consider the cases of the Deputy Executive Engineers, who were fit for promotion to the post of Executive Engineers on 15.12.1997 and the promotions were given on 9.12.1998. However, the Government had taken conscious decision to initiate departmental inquiry against the petitioner on 3.12.1998 and therefor,e the promotion of the petitioner was withheld as per the provisions of Para-7 of the Government Resolution issued by the General Administrative Department dated 23.9.1981. This clearly indicates that petitioner's name did figure in the selection list, however, the promotion was withheld as Departmental Inquiry was contemplated against him. In light of this, when the Disciplinary Inquiry is over and he is exonerated and subsequent promotion is also given to him, the following directions deserve to be given while disposing of the petition.

(i) The petitioner who has been exonerated in Disciplinary Inquiry is also eligible to be treated as having been promoted with effect from 9.12.1998. Accordingly, the respondents are hereby directed to pass appropriate order of deemed date to be granted to the petitioner after taking into consideration the facts and circumstances of his case.

(ii) The deemed date be granted to the petitioner after taking into consideration the factum that he has been

exonerated in the inquiry and his name was recommended by the concerned DPC which met on 17.12.1997 and all the consequential benefits flowing therefrom shall also be worked out and given to the petitioner within three months from the date of receipt of the order.

5. In view of aforesaid directions, the petition stands allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(S.R.BRAHMBHATT, J.)

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